



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TEGE EO Examinations Mail Stop 4920 DAL  
1100 Commerce St.  
Dallas, Texas 75242

501.03-00

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: October 11, 2012

Release Number: 201309018

Release Date: 3/1/2013

LEGEND

ORG – Organization name  
XX – Date Address - address  
Trustee - trustee

Taxpayer Identification Number:  
Person to Contact:  
Employee Identification Number:  
Employee Telephone Number:  
(Phone)  
(Fax)

ORG  
ADDRESS

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated September 26, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective March 10, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You must establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals.

Your stated purpose was to make grants to one or more organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code. You have not made any grants to charitable organizations from your inception to the end of the examination period.

Trustee, admitted in an interview on October 11, 20XX that all expenses on Form 990-PF were personal. Therefore, all payments made by you inured to her benefit and not for operations exclusively for one or more exempt purposes. These payments to her cause you to fail to meet the operational test. By failing the operational test, you are not exempt per Regulations

**1.501(c)(3)-1(a)(1).**

**Contributions to your organization are no longer deductible under IRC §170 after March 10, 20XX.**

**You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.**

**Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.**

**If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:**

**You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:**

**If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.**

**Sincerely,**

**Nanette M. Downing  
Director, EO Examinations**

**Internal Revenue Service**

June 21, 2012

ORG  
ADDRESS

**Department of the Treasury**

**Internal Revenue Service**

TE/GE Exemption Organizations Examination  
1100 Commerce Street, MC 4980 DAL  
Dallas, TX 75242

**Taxpayer Identification Number:**

**Form:**

**Tax Year(s) Ended:**

**Person to Contact/ID Number:**

**Contact Numbers:**

**Telephone:**

**Fax:**

**Certified Mail - Return Receipt Requested**

Dear ,

We propose to revoke our recognition of your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (the Code). We enclose our report of examination explaining why we are proposing this action.

If you accept our proposal, please sign and return the enclosed Form 6018, *Consent to Proposed Action - Section 7428*, unless you have already provided us a signed Form 6018. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter we will publish an announcement that you have been deleted from the cumulative list of organizations contributions to which are deductible under section 170 of the Code.

If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. This written request is called a protest. For your protest to be valid it needs to contain certain specific information which generally includes a statement of the facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, *The Examination Process*, and page 1 of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*. If you do submit a valid protest, then an Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498 and Publication 892 explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast

Track Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter. You may also request that we refer this matter for Technical Advice as explained in Publication 892 and an annual revenue procedure. Please contact the individual identified on the first page of this letter if you are considering requesting Technical Advice. If we issue a determination letter to you based on a Technical Advice Memorandum issued by the EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

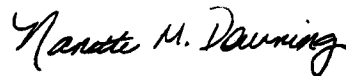
If you receive a final revocation letter, you will be required to file Federal income tax returns for the tax period(s) shown above as well as for subsequent years.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Nanette M. Downing".

Nanette M. Downing  
Director, EO Examinations

Enclosures:

Publication 892  
Publication 3498  
Report of Examination

Form <b>886-A</b>	<b>Explanations of Items</b>		Schedule number or exhibit
Name of Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>20XX12, 20XX12</b>	

LEGEND

ORG - Organization name      EIN - EIN      XX - Date      Address - address      City -  
city      State - state      Trustee-1 - 1<sup>st</sup> Trustee

**ISSUES:**

Whether ORG (ORG) continues to qualify for exemption under Section 501(c)(3) of the Internal Revenue Code?

Whether Trustee-1 (Trustee) is a disqualified person, as defined by section 4946(a)(1)(A) of the Code, with respect to ORG?

Whether the use of ORG funds by Trustee is an act of self-dealing as defined by section 4941(d)(1)(D)?

**FACTS:**

ORG (ORG) was issued a final determination letter on September 26, 20XX. It stated that ORG was a private foundation within the meaning of §501(c)(3) and §509(a) and required to file a Form 990-PF annually.

ORG's Form 1023 stated that the foundation was formed on March 10, 20XX. This is also the date on the trust agreement. The stated purpose of the foundation was to make grants to one or more organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code.

ORG's trustee Quit Claimed a residential piece of real estate, located at Address, City, State, to the foundation on April 30, 20XX.

ORG's trustee did not transfer the mortgage debt on the property located at Address, City, State, to the foundation at the time of the Quit Claim Deed transfer. ORG's trustee continues to live in the residence and pay the mortgage payments to the lender.

Trustee admitted in the interview on October 11, 20XX that all expenses on Form 990-PF were personal expenses.

The foundation had not made any grants to charitable organizations from its inception to the end of the examination period.

Form <b>886-A</b>	<b>Explanations of Items</b>	Schedule number or exhibit
Name of Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended 20XX12, 20XX12

Examination of ORG's books and records for the periods under examination revealed the following withdrawal information:

Withdrawals	<u>Amount</u>	<u>Amount</u>
House Related		
Other Withdrawals		
ATM Withdrawals		
Teller Withdrawals		
Bank Transfers		
Check Card Purchases		
POS Purchases		
Bank Fees	<u>          </u>	<u>          </u>
Total Other Withdrawals	<u>          </u>	<u>          </u>
Total Withdrawals	<u>          </u>	<u>          </u>

Trustee-1 had self-dealing transactions with ORG totaling \$\$, \$\$ in 20XX and \$\$ in 20XX.

**LAW:**

Code §501(a) provides that an organization described in §501(c) (3) is exempt from income tax. Code §501(c)(3) exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Federal Tax Regulations ("Regulations") §1.501(c) (3)-1(d) (2).

Regulations §1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in Code §501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Regulations §1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in Code §501(c)(3). An organization

Form <b>886-A</b>	<b>Explanations of Items</b>	Schedule number or exhibit
Name of Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>20XX12, 20XX12</b>

will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

Regulations §1.501(c)(3)-1(c)(2) provides that the operational test is not satisfied where any part of the organization's earnings inure to the benefit of private shareholders or individuals, and where the organization serves a private benefit rather than public interests.

IRC §4941(d)(1)(D) states that for purposes of this section, the term "self-dealing" means any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

IRC §4946(a)(1) states that for purposes of this subchapter, the term "disqualified person" means, with respect to a private foundation, a person who is (A) a substantial contributor to the foundation, or (B) a foundation manager (within the meaning of subsection (b)(1)),

IRC §4946(b)(1) defines the term "foundation manager" as an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation).

### **Government's Position:**

#### **An applicable tax-exempt organization.**

ORG was granted exemption under Section 501(c)(3) and Section 509(a) of the Internal Revenue Code, on September 26, 20XX, as a private foundation. As such, ORG is an applicable tax exempt organization.

#### **Disqualified Person.**

For a person to be considered a "disqualified person" he/she must have been a substantial contributor to the foundation (IRC §4946(a)(1)(A)) or a foundation manager within the meaning of IRC §4946(b)(1).

Trustee-1 is the Trustee of ORG and its only contributor. For the years under examination, Trustee-1 had control of the daily operations of the foundation, including single signatory authority in billing approval. As the sole contributor to ORG and the person having complete operational

Form <b>886-A</b>	<b>Explanations of Items</b>		Schedule number or exhibit
Name of Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>		Year/Period ended <b>20XX12, 20XX12</b>

control of the operations of the organization for the years under examination, Trustee-1 meets the definition of a disqualified person under IRC §4946(a)(1)(A) and IRC §4946(b)(1).

### **Self Dealing**

The Trustee admitted in interview on October 11, 20XX that all expenses on Form 990-PF were personal. (4941(d)(1)(D)).

### **Conclusions:**

The stated purpose of the foundation was to make grants to one or more organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code. ORG has not made any grants to charitable organizations from its inception to the end of the examination period.

Trustee-1, Trustee of ORG, was a disqualified person with respect to ORG for the periods under examination. Trustee-1 had transactions with ORG that met the definition of self-dealing that made her liable for tax under IRC §4941.

Trustee-1, Trustee of ORG, admitted in interview on October 11, 20XX that all expenses on Form 990-PF were personal. Therefore, all payments made by the foundation were for the private benefit of the trustee and not for operations exclusively for one or more exempt purposes. This payments to the trustee, Trustee-1, causes ORG to fail to meet the operational test. By failing the operational test ORG is not exempt (Regulations §1.501(c)(3)-1(a)(1)).

ORG should be revoked back to its formation, March 10, 20XX.